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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CRAIG D. JONES

on

Habeas Corpus.

D074038

(San Diego County
Super. Ct. No. SCN372196)

ORIGINAL PROCEEDING in habeas corpus. Petition denied without prejudice.

Athena Shudde, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

No appearance for Real Parties in Interest.

Following his conviction of several offenses, in a bifurcated proceeding, Craig D. Jones admitted the truth of allegations that he suffered two prior serious felony convictions, including an Illinois conviction for robbery. His sentence included a five-year enhancement for the Illinois conviction.

Jones has filed a petition for writ of habeas corpus raising a claim of ineffective assistance of counsel stemming from his counsel's failure to challenge the strike and serious felony allegations relating to Jones's prior Illinois robbery conviction. He

maintains the documents provided to defense counsel indicate his Illinois robbery conviction did not qualify as a serious felony and strike under California law, since that offense does not include all of the elements of a serious felony and strike as defined in California.

In our disposition of Jones's appeal, which we decide concurrently with this petition, we have vacated Jones's sentence and remand the matter with respect to his prior serious felony convictions, including the Illinois prior conviction. Jones will have an opportunity in a new sentencing hearing to challenge whether that conviction qualifies as a serious felony within the meaning of Penal Code sections 667, subdivision (a)(1) and 667, subdivisions (b) through (i). Accordingly, it is appropriate to deny Jones's petition without prejudice to him refileing it in the superior court. Jones alleges that no other applications, petitions or motions have been presented or filed in this or any other court pertaining to these matters. A petition for writ of habeas corpus generally should first be filed in the superior court. (*In re Roberts* (2005) 36 Cal.4th 575, 593; *In re Steele* (2004) 32 Cal.4th 682, 688, 692; *In re Hillery* (1962) 202 Cal.App.2d 293, 294.) We exercise our discretion to deny his petition on the ground it is properly presented to the superior court in the first instance. (*In re Ramirez* (2001) 89 Cal.App.4th 1312, 1316, 1320; *In re Hillery*, at p. 294.)

DISPOSITION

The petition is denied without prejudice.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

GUERRERO, J.